Medan Juta Sdn Bhd v Tsoi Ping Kwan

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO 24–830–1995
LOW HOP BING J
15 DECEMBER 1995

Land Law *— Restraints on dealings — Caveats — Caveatable interest — Application for removal of caveat — Application by registered proprietor — Loans made by caveator to shareholder and director of registered proprietor — Whether caveator has cavetable interest — Whether caveator beneficially entitled under any trust affecting the land — National Land Code 1965 s 323(1)(b)*

The plaintiff was the registered proprietor of two pieces of land ('the lands'). The defendant caveated the lands on the grounds of the loan transactions ('the loans') involving the defendant and J, who was a shareholder and a director of the plaintiff. The defendant alleged that his remittances to the plaintiff and J amounted to RM3,744,276.84, against which J had made a repayment of RM2,276,266.74, leaving an outstanding sum of RM1,468,010.10. The plaintiff's books did not in any way make any reference to the defendant in any capacity whatsoever. The defendant asserted that the lands were purchased and developed with the loans and that the plaintiff held the lands in trust for the defendant as beneficiary of a resulting trust in his favour and therefore, the defendant had a caveatable interest in the lands by virtue of s 323(1)(b) of the National Land Code 1965 ('the Code'). The plaintiff contended that the defendant's remedy, if any, was against J on the basis of a creditor-debtor relationship since there was no question of any trust arising in favour of the defendant. The plaintiff applied to remove the caveats.

Held, allowing the application:

(1) In order to determine whether a caveat could be sustained, three questions must be asked: (i) whether the caveator has disclosed a caveatable interest in his application under s 323(1)of the Code; (ii) if he has established a caveatable interest, then, whether the evidence produced in support of his claim disclosed a serious question to be tried; and (iii) if both questions were resolved in the caveator's favour, then whether the balance of convenience or justice lay in favour of the caveat remaining on the register pending the disposal of his suit (see pp 869I and 870A–B); *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782 followed.

(2) Under s 323(1)(b) of the Code, the caveator must show that there is a trust affecting the land or interest in the land and the defendant as the caveator is beneficially entitled under the trust.

A resulting trust can arise where two persons advance purchase money jointly and the purchase is taken in the name of one only; this resulting trust is in favour of the other as to so much of the money as the other advanced (see p 870E–F); *Chin Shak Len v Lin Fah* [1962] MLJ 418 followed.

(3) Pursuant to his application for entry of the caveats, the defendant was asserting the existence of a shareholding trust held by J in his favour as beneficiary. He was not claiming that the plaintiff as the registered proprietor was holding the land in trust for him as beneficiary. The dispute was, in effect, one between the defendant and J as an individual in relation to the shares owned by J in the plaintiff, and not between the plaintiff and the defendant in relation to the lands. Thus, the defendant should pursue his remedies against J personally arising out of a creditor-debtor relationship. Repayments had been made by J towards the various remittances made by the defendant and there remained an outstanding balance which gave the defendant a cause of action against J. However, there was no evidence that the remittances made by the defendant had been used by the plaintiff either wholly, exclusively, substantially or partly for the purchase of the lands. Therefore, the defendant, as caveator, had not discharged the onus of proving that he was beneficially entitled under any trust affecting the lands or interest as contained in s 323(1)(b); he had no caveatable interest and the caveats would accordingly be removed (see pp 870F–I and 871A).

[Bahasa Malaysia summary

Plaintif adalah tuan punya berdaftar dua bidang tanah ('tanah-tanah itu'). Defendan telah memasukkan kaveat ke atas tanah-tanah itu atas alasan transaksi pinjaman ('pinjaman tersebut') yang melibatkan defendan dan J, yang merupakan seorang pemegang saham dan pengarah plaintif. Defendan mengatakan bahawa kiriman wangnya kepada plaintif dan J berjumlah RM3,744,276.84, di mana J telah membuat pembayaran balik sebanyak RM2,276,266.74, meninggalkan baki yang belum dijelaskan sejumlah RM1,468,010.10. Buku-buku plaintif tidak sama sekali membuat sebarang rujukan kepada defendan dalam apa-apa keupayaan pun. Defendan menegaskan bahawa tanah-tanah itu telah dibeli dan dimajukan dengan pinjaman tersebut dan bahawa plaintif memegang tanah-tanah itu atas amanah untuk defendan sebagai benefisiari satu amanah berbangkit yang memihak kepadanya dan oleh yang demikian, defendan mempunyai suatu kepentingan boleh kaveat dalam tanah-tanah itu berdasarkan s 323(1)(b) Kanun Tanah Negara 1965 ('Kanun itu'). Plaintif berhujah bahawa remedi defendan, jika ada, adalah terhadap J berdasarkan perhubungan pemiutang-penghutang kerana tiada persoalan sebarang amanah yang memihak kepada defendan yang telah timbul. Plaintiff memohon untuk membatalkan kaveat-kaveat tersebut.

Diputuskan, membenarkan permohonan:

(1) Untuk menentukan sama ada suatu kaveat boleh dikekalkan atu tidak, tiga soalan mesti ditanya: (i) sama ada pengkaveat telah mendedahkan suatu kepentingan boleh kaveat dalam permohonannya di bawah s 323(1) Kanun itu; (ii) jika dia telah menunjukkan suatu kepentingan boleh kaveat, jadi, sama ada keterangan yang dikemukakan bagi menyokong tuntutannya mendedahkan suatu persoalan serius yang perlu dibicarakan; dan (iii) jika kedua-dua soalan dijawab tersebut memihak kepada pengkaveat, maka sama ada imbangan kemudahan atau keadilan memihak kepada membiarkan kaveat itu kekal di dalam daftar, sementara menunggu penyelesaian guamannya (lihat ms 869I dan 870A–B); *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782 diikut.

(2) Di bawah s 323(1)(b) Kanun itu, pengkaveat mesti menunjukkan bahawa terdapat suatu amanah yang menjejaskan tanah itu atau kepentingan dalam tanah itu, dan defendan sebagai pengkaveat adalah berhak mendapat faedah di bawah amanah itu. Suatu amanah berbangkit boleh timbul di mana dua orang mendahulukan wang belian bersesama, tetapi belian itu dibuat atas nama seorang sahaja; amanah berbangkit memanfaatkan seorang yang lagi sebanyak mana wang yang disumbangnya (lihat ms 870E–F); *Chin Shak Len v Lin Fah* [1962] MLJ 418 diikut.

(3) Dalam permohonan defendan untuk memasukan kaveat-kaveat, defendan telah menyatakan kewujudan suatu amanah pemegang syer yang dipegang oleh J bagi pihaknya sebagai benefisiari. Dia bukannya menuntut bahawa plaintif, sebagai tuan punya berdaftar, telah memegang tanah itu atas amanah untuknya sebagai benefisiari. Pertikaian itu adalah, pada hakikatnya, antara defendan dengan J sebagai seorang individu, berkenaan dengan syer yang dimiliki oleh J dalam plaintif, dan bukannya antara plaintif dengan defendan berkaitan dengan tanah-tanah itu. Maka, defendan sepatutnya mendapatkan remedinya terhadap J secara peribadi, berdasarkan perhubungan pemiutang-penghutang. Pembayaran balik telah dibuat oleh J terhadap berbagai kiriman wang yang dibuat oleh defendan, dan baki yang belum dijelaskan memberi kausa tindakan kepada defendan terhadap J. Walau bagaimanapun, tiada bukti bahawa kiriman wang yang dibuat oleh defendan telah pun digunakan oleh plaintif secara sama sekali, eksklusif, sebahagian besarnya atau sebahagiannya untuk membeli tanah-tanah itu. Maka, defendan, sebagai pengkaveat, tidak mendiscajkan beban membukti bahawa dia adalah berhak mendapat faedah di bawah sebarang amanah berkenaan dengan tanah-tanah itu atau kepentingan seperti yang termaktub dalam s 323(1)(b); dia tidak ada kepentingan boleh kaveat dan kaveat-kaveat akan dibatalkan dengan sewajarnya (lihat ms 870F–I dan 871A).

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No W–02–850–95.]

Notes

For cases on caveats and caveatable interest, see 8 *Mallal's Digest* (4th Ed Reissue) paras 2242–2381.

Cases referred to

Chin Shak Len v Lin Fah [1962] MLJ 418
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719
Murugappa Chettiar Lakshmanan v Lee Teck Mook [1995] 1 MLJ 782 (CA)

Legislation referred to

National Land Code 1965 s 323(1)(a), (b)

Logan Sabapathy (David Morais with him) *(M David Morais)* for the plaintiff.
KH Lim (Skrine & Co) for the defendant.

Low Hop Bing J: This application in encl 1 is filed by the plaintiff for the following orders:

1 that the following caveats lodged by the defendant be removed:
   (a) caveat vide Presentation No 2364/92, Jilid 58, Folio 111 against the land held under CT No 9098, Lot 1092 in the Mukim of Cheras, Hulu Langat; and
   (b) caveat vide Presentation No 7299/92, Jilid 434, Folio 34 against the land held under EMR No 3116, Lot 1536 in Mukim of Cheras, Hulu Langat ('the caveats' and 'the lands');
2 that the Registrar of Land Titles shall forthwith cancel the entry of the caveats on the register documents of title for the said lands;
3 that the costs of this summons be paid by the defendant.

The plaintiff is the registered proprietor of the lands which are presently charged to Bolton Finance Bhd ('the chargee'). On 4 May 1995, the defendant entered the caveats on the lands, allegedly on grounds of the loan transactions involving the defendant and one Jessie Loh Lai Ngoh ('Jessie'), who is a shareholder and a director of the plaintiff.

The defendant averred that he has remitted to the plaintiff and to Jessie the following sums of money:

		Year 1991	
Recipient	*Date*	*HK Dollars*	*RM*
Jessie	13 May 1991	1,000,200.00	352,200.00

Jessie	13 June 1991	1,000,200.00	358,500.00
Jessie	1 August 1991	1,500,300.00	535,307.04
Jessie	14 October 1991	1,500,300.00	530,516.27
			Total: RM1,776,523.31

Year 1992

Recipient	*Date*	*HK Dollars*	*RM*
Plaintiff	24 January 1992	300,000.00	101,847.00
Plaintiff	29 August 1992	600,000.00	191,696.00
Plaintiff	16 December 1992		750,000.00
			Total: RM1,043,543.00

Year 1993

Recipient	*Date*	*HK Dollars*	*RM*
Plaintiff	11 February 1993		304,565.53
Plaintiff	23 July 1993		131,396.00
Plaintiff	27 August 1993		488,246.00
			Total: RM924,207.53

The defendant also averred that the lands were purchased and developed with the aforesaid remittances and that the plaintiff now holds the lands in trust for him as beneficiary. The defendant therefore claims that he has a caveatable interest in the lands by virtue of s 323(1)(b) of the National Land Code 1965. For the purposes of this judgment, unless the context otherwise requires, a reference to a section hereinafter shall be a reference to that section in the National Land Code.

It is to be noted that the plaintiff's books do not in any way make any reference to the defendant in any capacity whatsoever.

The lands (excluding the conversion expenses, other miscellaneous expenses and that arising under the Bolton Finance Bhd loan) cost a total sum of approximately RM5,700,000. The loan obtained from Bolton Finance Bhd was RM3,600,000. The defendant's remittances to the plaintiff and Jessie amounted to RM3,744,273.84, against which Jessie has made a repayment of RM2,276,266.74, leaving an outstanding balance of RM1,468,007.10.

Aside from the sum of HK$1,000,000 which was repaid by Jessie to the defendant in 1991, Jessie has effected further repayments to the defendant representing approximately RM1,348,700 by way of cash

exchange undertaken at Jessie's request through the forex money changer, Chan Ah Chat, in the following manner:

(a) a sum of RM750,000 was paid by the defendant to the company's account at Hongkong Bank on 15 December 1992 upon Jessie's request for a short-term loan to enable her to regularize her tax position as well as to address an audit exercise of the company. This sum of RM750,000 was repaid to the defendant within a week of 15 December 1992. In this respect, a sum of approximately RM175,000 was repaid to the defendant through Mr Chan Ah Chat whilst a further sum of RM575,000 was paid to the defendant vide DBS Bank of Singapore on or about 21 December 1992;

(b) a sum of RM490,000 was paid by the defendant to the company's account at Hongkong Bank on 27 August 1993 upon Jessie's request, again, for a short-term loan to enable her to regularize her tax position as well as to address an audit exercise of the company;

(c) on or about 6 July 1993, Jessie repaid to the defendant approximately RM396,600 (approximately HK$1,200,000) through Mr Chan Ah Chat;

(d) on or about 5 October 1994, Jessie repaid to the defendant approximately RM777,170 (approximately HK$2,300,000) through Mr Chan Ah Chat.

In all the above repayments, the defendant acknowledged the same by way of a telephone conversation with Jessie, contemporaneous to the aforesaid dates.

The lands are in two parcels. Parcel I consisting of 43 acres being held under CT 9098, Lot 1092 was purchased by the plaintiff pursuant to a sale and purchase agreement dated 30 August 1991 for RM4,640,570 and completed on 29 January 1992. This was partly financed by way of a loan of RM2,900,000 from Bolton Finance Bhd. Parcel II is the land held under EMR No 3116, Lot 1536 consisting of more than 9 acres and was purchased by the plaintiff pursuant to a sale and purchase agreement dated 16 October 1991 and completed on 31 July 1992, for RM1,087,570. Bolton Finance Bhd gave the plaintiff a loan of RM700,000 towards the purchase of parcel II.

It was argued for the defendant that the defendant is a beneficiary of a resulting trust in his favour and therefore has a caveatable interest under s 323(1)(b).

The plaintiff contended that the defendant's remedy, if any, is against Jessie on the basis of a creditor-debtor relationship since there is no question of any trust arising in favour of the defendant.

In my judgment, in order to sustain a caveat, a caveator must first pass through three stages:

(i) whether he has disclosed a caveatable interest in his application under s 323(1);

(ii) if he has established a caveatable interest, then, whether the evidence produced in support of his claim discloses a serious question to be tried; and

(iii) if both questions are resolved in the caveator's favour, then whether the balance of convenience or justice lies in favour of the caveat remaining on the register pending the disposal of his suit: see *Murugappa Chettiar Lakshmanan v Lee Teck Mook* [1995] 1 MLJ 782 at 788–789 (CA).

> If it appears that the grounds ... are insufficient in law to support a caveat, then *cadit quaestio*, and the caveat must be removed without the necessity of going further. (See *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 at p 741 per Gopal Sri Ram JCA.)

Section 323(1)(a) and (b) provide as follows:

> 323 Application for entry of private caveats.
>
> (1) The persons and bodies at whose instance a private caveat may be entered are —
>
> (a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;
>
> (b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest.

Under s 323(1)(b), the caveator must show that there is a trust affecting the land or interest in the land, and the defendant as the caveator is beneficially entitled under the trust.

A resulting trust can arise where two persons advance purchase money jointly and the purchase is taken in the name of one only; this resulting trust is in favour of the other as to so much of the money as the other advanced: *Chin Shak Len v Lin Fah* [1962] MLJ 418 at p 420.

Pursuant to Form 19B, exh P2 in encl 2, ie his application for entry of a private caveat, the defendant was asserting the existence of a shareholding trust held by Jessie in his favour as beneficiary. The defendant was not claiming that the plaintiff as the registered proprietor was holding the lands in trust for him as beneficiary. The dispute is, in effect, one between the defendant and Jessie as an individual in relation to the shares owned by Jessie in the plaintiff, and not between the plaintiff and the defendant in relation to the lands.

On the facts as adumbrated above, I am of the view that the defendant should pursue his remedies against Jessie personally arising out of a creditor-debtor relationship. Repayments have been made by Jessie towards the various remittances made by the defendant, and there was, indeed, still an outstanding balance which gives the defendant a cause of action against Jessie, but it seems to me that vis-à-vis the land, there is no evidence before me that the remittances made by the defendant have been used by the plaintiff either wholly, exclusively, substantially or partly for the purchase

of the lands. Hence, the defendant as caveator has not discharged the onus of proving that he is beneficially entitled under any trust affecting the lands or interest as contained in s 323(1)(b). In the circumstances, I am of the view that the caveator has no caveatable interest and so the caveat must be removed. I therefore make an order in terms of this application.

Application allowed.

Reported by Loo Lai Mee